

ORDINANCE NO. 26326

**AN ORDINANCE OF THE CITY OF SAN JOSÉ TO AMEND SECTION 20.40.100 OF CHAPTER 20.40 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO AMEND TABLE 20-90 TO ADD ADDITIONAL USE REGULATIONS ON A PORTION OF THE PROPERTIES WITHIN THE DOWNTOWN CORE REGARDING GROUND FLOOR, STREET FRONTAGE SPACE AND TO ADD SECTION 20.200.295 TO CHAPTER 20.200 TO FURTHER CLARIFY THE ADDITIONAL GROUND FLOOR USE REGULATIONS.**

**WHEREAS**, on December 19, 2000, the City Council adopted Urgency Ordinance No. 26277 imposing a moratorium on certain ground floor uses within a portion of the Downtown Core in response to concerns regarding the need to protect the character and quality of certain ground floor uses located in the Downtown Core; and

**WHEREAS**, on March 13, 2001, the City Council adopted Urgency Ordinance No. 26320 to extend the time period of the ground floor use moratorium; and

**WHEREAS**, this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines; and

**WHEREAS**, the Council now desires to establish zoning regulations for a portion of the Downtown Core ground floor space to preserve space primarily for walk-in, customer oriented retail, services, restaurant, and entertainment uses.

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

**SECTION 1.** Section 20.40.100 of Chapter 20.40 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

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#### **20.40.100 Allowed Uses and Permit Requirements**

- A. "Permitted" land uses are indicated by a "P" on Table 20-90.
- B. "Conditional" uses are indicated by a "C" on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit as set forth in Chapter 20.100.
- C. "Special" uses are indicated by a "S" on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Special Use Permit as set forth in Chapter 20.100.
- D. "Administrative" uses are indicated by a "A" on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with an Administrative Permit as set forth in Chapter 20.100.
- E. Land uses not Permitted are indicated by a "-" on Table 20-90. Land uses not listed on Table 20-90 are not Permitted.
- F. When the right column of Table 20-90 includes a reference to a Section number or a footnote, the regulations cited in the Section number or footnote apply to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other Title of the San Jose Municipal Code.
- G. The first column under Applicable Sections & Notes identifies further regulations on the uses in a portion of the CG Zoning District which apply to ground floor building space defined as Downtown Ground Floor Space ("DG Area") in Section 20.200.295. If there are no additional regulations on properties located in the DG Area noted in this column, the use regulations for the DG Area remain those regulations of the CG Zoning District.

Table 20-90: Commercial Districts Land Use Regulations						
Use	Zoning District				Applicable Notes & Sections	
	CO	CP	CN	CG	Add'l Use Regulations for the DG Area	Applicable to all Commercial Districts
<b>General Retail</b>						
Retail sales, goods and merchandise	-	P	P	P	Note a	
Alcohol, off-site sales	-	C	C	C		Section 20.80.900
Bakery, retail	-	P	P	P		
Food, beverage, groceries	-	P	P	P		
Nursery, plant	-	P	P	P		Note 1
Outdoor vending	-	A	A	A		Part 10, Chapter 20.80
Pawn shop/broker	-	C	C	C	Note b	See Title 6
Seasonal sales					C	Part 14, Chapter 20.80
<b>Education and Training</b>						
Child daycare center located on an existing school site or as an incident to an on-site Church/Religious Assembly use involving no building additions or changes to the site	P	P	P	P		
Day care center	C	C	C	C	Note c	
Instructional art studios	-	P	P	P	-	Note 2
Instructional art studios, with live models	-	C	C	C	-	Note 2
Private instruction, personal enrichment	-	P	P	P	-	Note 3
School- elementary and secondary (Public)	P	P	P	P	-	
School- elementary and secondary (Private)	-	C	C	C	-	
School, driving (class C & M license)	-	P	P	P	-	Note 4
School, post secondary	-	P	P	P	-	Note 5
School, trade and vocational	-	C	C	C	-	
					Note d	
<b>Entertainment and Recreation Related</b>						
Arcade, amusement	-	C	C	C	Note e	
Dancehall	-	C	C	C		
Poolroom/Billiards Establishment	-	C	C	C		
Private club or lodge	C	C	C	C	-	
Recreation, Commercial/indoor	-	P	P	P		
Recreation, Commercial/outdoor	-	C	C	C		
Theatre, indoor	-	C	C	C		
Theatre, outdoor	-	-	-	C		
<b>Food Services</b>						
Banquet facility	-	C	C	C		
Caterer	-	P	P	P	C Note f	Note 6
Drinking establishments	-	C	C	C		
Entertainment (with any food or alcohol service)	-	C	C	C		
Public eating establishments	-	P	P	P		
<b>Health and Veterinary Services</b>						
Animal boarding, indoor	-	P	P	P	-	Section 20.40.120

A = Administrative Permit C = Conditional P = Permitted - = Not Permitted S = Special Use Permit

Use	Zoning District				Applicable Notes & Sections	
	CO	CP	CN	CG	Add'l Use Regulations for the DG Area	Applicable to all Commercial Districts
Animal grooming	-	P	P	P	-	Section 20.40.120
Emergency ambulance service	C	C	C	C	-	
Hospital/ in-patient facility	C	C	C	C	-	
Medical clinic/ out-patient facility	P	P	P	P	-	
Medical, dental and health practitioner	P	P	P	P	-	
Veterinary clinic	-	P	P	P	-	Note 7
<b>General Services</b>						
Bed and Breakfast	-	P	P	P		Part 2, Chapter 20.80
Dry cleaner	-	P	P	P		
Hotel/motel	-	P	P	P		
Laundromat	-	P	P	P		
Maintenance and repair, small household appliances	-	P	P	P	-	
Messenger services	P	P	P	P	-	Note 8
Mortuary and funeral services	P	P	P	P	-	
Personal services	-	P	P	P	Note g	
Photo processing and developing	-	P	P	P		
Printing and publishing	-	P	P	P	Note h	
<b>Offices and Financial Services</b>						
Automatic Teller Machine	P	P	P	P		Section 20.80.200
Business Support	-	P	P	P	-	
Financial Institution	P	P	P	P	C Note i	
Offices, business and administrative	P	P	P	P	- Note j	Section 20.40.110
<b>Public, Quasi-Public and Assembly Uses</b>						
Cemetery	C	C	C	C	-	
Church/Religious Assembly	C	C	C	C		
Museums, libraries, parks, playgrounds, or community centers (Publicly operated)	P	P	P	P	Note k	
Museums, libraries, parks, playgrounds, or community centers (Privately operated)	-	C	C	C	Note k	
<b>Residential</b>						
Emergency residential shelter	C	C	C	C	-	Section 20.80.500
Live/Work	-	S	S	S	-	Section 20.40.130
Mixed Use/Ground floor commercial with residential above	-	C	C	C	Note l	Note 9
Residential Care Facility for seven or more persons	C	C	C	C	-	
Residential Service Facility for seven or more persons	C	C	C	C	-	
Single Room Occupancy Hotel	-	C	C	C	-	Part 15, Chapter 20.80
Single Room Occupancy Living Unit	-	C	C	C	-	Part 15, Chapter 20.80
<b>Drive-Through Uses</b>						
Drive-through in conjunction with any use	-	C	C	C	-	Part 15, Chapter 20.80
<b>Recycling Uses</b>						
Reverse vending	A	A	A	A	-	
Small collection facility	A	A	A	A	-	

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Use	Zoning District				Applicable Notes & Sections	
	CO	CP	CN	CG	Add'l Use Regulations for the DG Area	Applicable to all Commercial Districts

<b>Transportation and Communication</b>						
Communications service exchange	-	-	-	C	-	
Community television antenna systems	C	C	C	C	-	
Off-site, alternating use and alternative parking arrangements	S	S	S	S	-	Section 20.90.200
Parking establishment, off-street	C	C	C	C	-	Section
Utility facilities, excluding corporation yards, storage or repair yards and warehouses	C	C	C	C	-	
Television, radio studios without antenna/dishes	-	-	-	C	-	
Short term parking lot for uses or events other than on-site	-	-	-	C	-	Note 10
Wireless communication antenna	C	C	C	C	-	Section 20.80.1900
Wireless communication antenna, building mounted	P	P	P	P	-	Section 20.80.1900
<b>Vehicle Related Uses</b>						
Accessory installation, passenger vehicles and pick-up trucks	-	-	C	P	-	
Auto broker, retail	-	-	P	P	-	
Auto broker, wholesale, no on-site storage	P	P	P	P	-	
Car wash, detailing	-	-	C	C	-	
Gas or charge station	-	C	C	P	-	Note 11
Gas or charge station with incidental service and repair	-	C	C	P	-	Note 12
Glass sales, installation and tinting	-	-	C	P	-	
Sale or lease, commercial vehicles	-	-	C	C	-	
Sale passenger vehicles, pick-up trucks not exceeding twenty-five (25) feet in length, and motorcycles	-	C	C	P	-	
Leasing passenger vehicles, pick-up trucks not exceeding twenty-five (25) feet in length, and motorcycles	-	C	C	C	-	
Sale, vehicle parts	-	C	P	P	-	Note 14
Tires, batteries, lube, oil change, smog check station, air conditioning servicing of passenger vehicles and pick-up trucks	-	-	C	P	-	Note 13

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**Notes Applicable to the DG Area Only:**

- (a) Excluding second-hand stores not dealing primarily in antiques, artworks, or vintage clothing.
- (b) Only as a use incident to a retail jewelry store, otherwise, not permitted.
- (c) Only as a use incident to existing on-site office use, otherwise, not permitted.
- (d) Culinary/Art School with public classes and public demonstrations allowed.
- (e) Allowed only as an incident use to other allowed recreation uses.
- (f) Only as a use incident to restaurant, grocery or bakery uses, otherwise, not permitted.
- (g) Permitted Use includes mail service centers but excludes check-cashing services.
- (h) Only if dedicated primarily to on-site retail customer copy services, otherwise, not permitted.
- (i) Only if dedicated primarily to on-site retail customer services, otherwise, not permitted.
- (j) Exception for travel agencies and real estate agencies which are the only permitted uses.
- (k) Excludes community centers.
- (l) Subject to all other ground floor use regulations.

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**Notes Applicable to all Commercial Districts:**

- (1) In the CP District, landscaping materials, such as rock, mulch, and sand are limited to prepackaged sales.
- (2) Includes such areas as dance, music, martial arts and fine arts.
- (3) Includes such areas as driving, language, and academics.
- (4) No on site storage of vehicles permitted.
- (5) Includes public and private colleges and universities, as well as extension programs and business schools.
- (6) Not a catering facility.
- (7) No boarding, except for patient care.
- (8) No on site storage of vehicles permitted.
- (9) Make sure General Plan supports mixed use or residential.
- (10) Use must be less than twenty-four (24) hours.
- (11) No incidental repair or service permitted. No retail sale of food, grocery items or alcoholic beverages may be approved. See Section 20.80.550.
- (12) Incidental repair includes air conditioning service, carburetor & fuel injection service, electrical service, radiator service, and tune-up, lube, oil change, and smog check, as well as tires, batteries and accessories installation. Does not allow body repair or painting. No retail food, grocery items or alcohol. See Section 20.80.550.
- (13) Non engine and exhaust related service and repair allowed as incidental.
- (14) No outdoor sales areas or dismantling allowed.

**SECTION 2:** Chapter 20.200 of Title 20 of the San José Municipal Code is hereby amended to add Section 20.200.295 as follows.

**20.200.295 Downtown Ground Floor Space**

"Downtown ground floor space" means ground floor, street frontage, building space within that area described as follows:

- Both sides of Fountain Alley between 1<sup>st</sup> Street and 2<sup>nd</sup> Street
- Both sides of Post Street between Almaden Ave. and 1<sup>st</sup> Street
- Both sides of San Fernando between Almaden Ave. and 4<sup>th</sup> Street
- North side only of San Fernando Street between 4<sup>th</sup> & 5<sup>th</sup> Streets
- Both sides of Park Avenue from Market Street, continuing west for 540 feet
- Both sides of Paseo de San Antonio between Market Street and 4<sup>th</sup> Street
- Both sides of San Carlos between Market Street and 4<sup>th</sup> Street
- Both sides of Almaden Ave. between Santa Clara Street and San Fernando Street
- Both sides of San Pedro St. between St. John Street and San Fernando Street
- Both sides of Market St. between St. John Street and San Carlos Street
- Both sides of First St. between St. John Street and San Salvador Street
- Both sides of Second St. between Santa Clara Street and San Carlos Street
- Both sides of Third St. between Paseo de San Antonio and San Carlos Street
- East side only of Third St. between San Fernando and San Carlos Street
- West side only of Third St. from 463 feet north of San Fernando Street to 270 feet south of San Fernando Street
- Both sides of Fourth St. from 463 feet north of San Fernando Street to the north side of San Fernando Street
- West side only of Fourth Street from the south side of San Fernando Street to 270 feet south of San Fernando Street

Downtown ground floor space ("DG") shall not include ground floor space that can be segregated from the street frontage portion of the space, in a manner consistent with all applicable building codes (as is required by existing law and practice) and that leaves a viable store front space, as determined in compliance with the Special Use Permit requirements of Part 7, Section 20.100.

**SECTION 3:** The following provisions determine how the requirements of these additional Title 20 regulations apply to projects in the development review process at the time this Ordinance become effective on May 4, 2001.

1. **Approved projects not yet under construction.** Any approved development project for which construction has not begun as of the effective date of Ordinance No. 26326 may still be constructed as approved, so long as the required Building Permits have been obtained before the expiration of any applicable permit issued pursuant to Title 20 or, where applicable, before the expiration of any approved time extension.
2. **Approved projects not requiring construction.** Any approved land use not requiring construction that has not been established as of the effective date of Ordinance No. 26326 may still be established in compliance with its approved permit, so long as establishment occurs before the expiration of the permit or, where applicable, before the expiration of any approved time extension.

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3. **Projects under construction.** A structure that is under construction on the effective date of Ordinance No. 26326 need not be changed to satisfy any new or different requirements of the Ordinance, so long as construction is completed prior to the expiration of the applicable building permit(s), including time extensions.

**SECTION 4:** The City Council directs Redevelopment Agency staff to report to the Planning Commission and Council, no less than every two years, regarding the implementation of the regulations for the ground floor uses in the Downtown; and

**SECTION 5:** The City Council directs Redevelopment Agency staff to adapt these ground floor regulations to the Downtown zoning districts set forth in Chapter 20.70 of the San Jose Municipal Code and present proposed changes to Chapter 20.70 to the Council at such time as the Downtown zoning districts are updated for implementation.

**PASSED FOR PUBLICATION OF TITLE** this 20th day of March, 2001, by the following vote:

AYES: CAMPOS, CHAVEZ, CORTESE, DANDO, DIQUISTO, LeZOTTE, REED, SHIRAKAWA, WILLIAMS, YEAGER; GONZALES

NOES: NONE

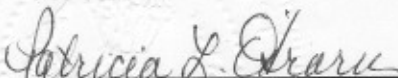
ABSENT: NONE

VACANT: NONE



RON GONZALES  
Mayor

ATTEST:

  
PATRICIA L. O' HEARN  
City Clerk